

**REMARKS**

Of the claims presented for examination in this divisional application, claims 105-106 have been withdrawn without prejudice from consideration; claims 100-104 and 107 have been amended herein. Support for the new claims and amendments may be found in the original claims and throughout the specification. No new matter is introduced by these amendments.

With this response, claims 100-104 and 107 are now pending and being examined on their merits. Applicants do not believe that any fees are due at this time; however, should any fees under 37 C.F.R. §§ 1.16 to 1.21 be required for any reason relating to this document, the Commissioner is authorized to deduct the fees from Howrey Simon Arnold & White Deposit Account No. 01-2508/11899.0175.

For the Examiner's convenience, a list of currently pending claims is attached at the end of this document.

**I. Restriction and Election of Species**

With respect to the prior restriction requirement, applicant acknowledges the election of Group I claims 100-104 and 107 drawn to antibodies and kits; and the election of a species of 5-enolpyruvylshikimate-3-phosphate synthase to which the antibodies are immunoreactive (SEQ ID NO: 3). However, in the office action dated October 4, 2000 the Examiner improperly withdrew claims 100 and 101 from consideration as being drawn to a nonelected species. In response to the election dated June 14, 2000, Applicants indicated claims 100-101 read on the elected species. Moreover, the language of the claims also clearly indicates that both claim 100 and claim 101 read on the elected species as SEQ ID NO: 3 has: X<sub>1</sub> as D, X<sub>2</sub> as T, X<sub>3</sub> as S, X<sub>4</sub> as

V and X<sub>5</sub> as P. In view of the foregoing, applicants respectfully traverse the withdrawal of claim 100 and claim 101 as being improper under 37C.F.R.1.142(b), as both claims encompass the elected species.

## **II. Information Disclosure Statement**

Applicants note that the information disclosure statements (Form 1449) returned with the office action of October 4, 2000 was not completely initialed by the Examiner. Specifically, on the 1449 received by OIPE July 24, 2000, it is unclear if items B5, C1, C2 and C4 have been initialed by the Examiner. Clarification is respectfully requested in the next office action.

## **III. Objection to the Specification**

The Examiner objected to the specification for the format in which the Trademarks AMICON™, SEPHAROSE™ and MONO Q™ were used. The specification has been amended to capitalize trademarks, and generic terminology has been inserted where appropriate, as requested by the Examiner.

## **IV. Rejections under 35 USC 112 second paragraph.**

The Examiner rejected claims 102-104 and 107 as allegedly being indefinite as they depend from nonelected claim 101 (renumbered as claim 100). Applicants note that the claims have been renumbered and claim dependencies have been amended accordingly. Applicants respectfully traverse the rejection of claims 102-104 and 107 for their dependence on claim 101 (i.e., renumbered claim 100). As discussed above in section I of this response, the withdrawal of claims 100 and 101 as being directed to nonelected species is neither consistent with the claims

nor MPEP 809.02(c). Claims 100 and 101 clearly read on the elected species. Therefore, claims 100 and 101 do not depend from a nonelected claim. Accordingly, Applicants respectfully request the withdrawal of the rejection.

The Examiner rejects claims 102-104 and 107 as allegedly being indefinite for the reciting "sequence domains." The Examiner asserts that the phrase has "no specific meaning in the art." Applicants disagree. It is a well-established tenet of patent law that applicants are free to act as their own lexicographer as long as the term in a claim is not given a meaning repugnant to the art. See *In re Hill*, 161 F.2d 367, 73 USPQ 482 (CCPA 1947). The claims clearly and distinctly set forth the amino acid sequences corresponding to the specific sequence domains (i.e.,  $RX_1HX_2E$ ,  $GDKX_3$ ,  $SAQX_4K$  and  $NX_5TR$ ). Moreover, the Examiner has not asserted that the definition is repugnant to the art. Thus, the rejection of the term under 35 U.S.C. 112 second paragraph is improper. Applicants respectfully request the withdrawal of the rejection.

The Examiner rejected claims 102-104 and 107 as allegedly being indefinite for repeated recitation of the word "the." Applicants respectfully traverse the rejection and note MPEP section 2173.05(e). The use of the article "the" does not necessarily render a claim indefinite, as one of ordinary skill in the art would recognize what elements were being referenced. However, in order to further the prosecution of this application, independent claims 100 and 107 have been amended to recite "said" in place of "the."

#### **V. Rejections under 35 U.S.C. §102(b) and 103(b).**

The Examiner rejected claims 102-103 as allegedly being anticipated by WO 94/04449; and claims 104 and 107 are rejected as allegedly being unpatentable over WO 94/04449. Applicants note that priority date of the instant application pursuant to 35 U.S.C. 120 is 8/31/90.

The WO 94/04449 reference is dated March 19, 1992. Thus, the reference is not available as prior art against the instant application under either 35 U.S.C. 102 or 35 U.S. C. 103.

Applicants submit that as all rejections of record have been overcome, the application is in condition for allowance and respectfully solicit such at the earliest possible time. The Examiner is encouraged to contact the undersigned should any additional information be necessary for allowance.

Respectfully submitted,



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